IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2203 OF 2005

Suresh Basantlal Bagrodia ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr.Subhash Jha, Sr.Counsel with Mr.Ghanshyam Upadhyay and Mr.Gaurav Agarwal for the Applicant.

Mr.V.B.Konde-Deshmukh, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

APRIL 11, 2005.

P.C.

1. Heard Counsel for the parties at length. Perused the record.

2. This Application takes exception to the order passed by the Sessions Judge, Raigad, Alibag dated 29th March 2005 below Exhibit 1 in Criminal Misc.Application No.128 of 2005.

3. Briefly stated, the Applicant has been named as accused for offence punishable under Section 407 and 411 read with Section 34 of the Indian Penal Code in respect of goods which were to be transported through Bombay-Andhra Transport at the instance of Mahindra Unique Steel Company, Khopoli, to be delivered at Madras. The value of the goods in question is stated to be around Rs.11,33,222/- (Rupees Eleven Lakhs Thirty-three Thousand Two Hundred Twenty-two). Instead of delivering the goods at the destination at Madras, the truck carried the goods to the godown of the Applicant at Chakan, Pune and unloaded the said materials. It is for this reason that the Applicant has been named as accused. During the course of investigation, statement of Shri Ramu Shrinivasrao Mandar, owner of Bombay-Andhra Transport Co. has been recorded, who has deposed about this fact.

4. Indeed, the Applicant was released on anticipatory bail by order dated 1st October 2004 by the Sessions Judge, Alibag. The prosecution

thereafter moved application for cancellation of anticipatory bail, essentially on two counts. Firstly, that the Applicant was misleading the investigating agency. Secondly, that the Applicant was not co-operating during the investigation and failed to attend the Police Station and refused to accompany the Investigating Officer to Aurangabad for verification of certain information which had become available to the Investigating Officer. Both these grounds found favour with the Sessions Judge, Raigad, who, in turn, allowed the Application preferred by the prosecution and cancelled the anticipatory bail order operating in favour of the Applicant dated 1st October 2004 by speaking order dated 29th March 2005.

5. To get over this position, Counsel for the Applicant submits that it was not open to some other Judge to cancel the anticipatory bail order operating in favour of the Applicant and it was expected of the prosecution to move such application before the same Judge, who had granted anticipatory bail to the Applicant on 1st October 2004. To buttress this submission, reliance is

placed on the decision of the Supreme Court on **(2002) 1 SCC 649 in the case of Harjeet Singh Alias Seeta vs. State of Punjab & Anr.** and another decision in the case of **Mahant Chand Nath Yogi & Anr. vs. State of Haryana reported in (2003) 1 SCC 326.**

6. Insofar as merits are concerned, learned Counsel contends that the Applicant has by now produced all the relevant records to justify the sales made by the Applicant in respect of the disputed property. According to Mr.Jha for the Applicant, all the bills for the transaction from June 2004 onwards has been submitted to the investigating agency and if it is so, it is inappropriate to suggest that the Applicant is not co-operating for the purpose of investigation or had misled the course of investigation as alleged. Insofar as the ground that the Applicant refused to attend the Police Station and accompany the Investigating Officer to Aurangabad, Mr.Jha contends that the Applicant is heart patient and for which reason, he did not agree to the request of the Investigating Officer to proceed to

Aurangabad on the same day. Mr.Jha submits that the Applicant is always ready and willing to co-operate for the purpose of investigation.

7. On the other hand, learned A.P.P. has supported the order passed by the lower Court and submits that even after indulgence was shown by this Court, the Applicant has not come out with clean breast. He has produced documents selectively and has made no efforts to produce relevant record to justify the procurement of subject goods from legitimate sources. The fact that he had sold the goods to four different parties is already matter of record. The subject goods which have been removed from the factory premises and unloaded in the godown of the Applicant, were round steel bars of different sizes of 40 mm, 10 mm and 50 mm, whereas, the two bills produced by the Applicant of Sangam Enterprises to justify the procurement of material sold by him to the four parties by credit sales i.e. M/s.Sanjeev Auto Parts Mfg. (P) Ltd., M/s.Royal Steel Company, M/s.Pranav Engineering and M/s.Sanjeev Precision Comp (P) Ltd., indicate that the materials procured

by the Applicant was square 130 mm bar and M.S.Bright bars respectively. The second bill does not mention the size of the M.S.Bright bars. Besides, the two bills which are relied by the Applicant pertain to period after 16th June 2004 and 17th June 2004 respectively, whereas, the transaction in question took place at around 31st May 2004 and 1st June 2004 as is seen from the allegation in the F.I.R., which fact is supported by the evidence collected by the investigating agency so far. On this basis, it is argued that the Applicant is trying to mislead the investigating agency in respect of an offence, which is a serious one.

8. Insofar as the explanation offered by the Applicant about his denial to accompany the Investigating Officer to Aurangabad for the purpose of verification of certain information, learned A.P.P. submits that even that is an afterthought, only to justify the refusal.

9. Having considered the rival submissions, I shall first deal with the legal contention raised

on behalf of the Applicant. Reliance placed on the two decisions of the Apex Court in the case of **Harjeet Singh (supra) and Mahant Chand (supra)** are of no avail. Insofar as the former case is concerned, the question that was considered by the Apex Court in that decision, was not as to whether the Application for cancellation of bail should be moved before the same Judge, who had granted the bail, even though the ground for cancellation is one of violating the condition of bail. Whereas, principle considered by the Apex Court is in respect of entertaining successive bail applications by co-ordinate Benches. That is not the issue on hand. Similarly, the decision of **Mahant Chand (supra)** pressed into service deals with the general principles as to under which circumstances, bail granted by the lower Court can be cancelled by the Superior Court. Even that is not the question, which is posed for our consideration. In the present case, the Application preferred by the prosecution before the lower Court for cancellation of bail was on the ground that the Applicant was misleading the investigating agency, taking advantage of the

anticipatory bail in his favour and further, was not co-operating with the Investigating Officer and had refused to accompany the Investigating Officer to Aurangabad for verification of certain information. This reason has weighed with the lower Court in allowing the application preferred by the prosecution.

10. To get over this position, Mr.Jha contends that the Application as was presented by the prosecution was nothing but in the nature of appeal preferred before another Judge. The argument of Mr.Jha clearly overlooks the substance of the order. The form of the Application, even if inappropriate, will make no difference if the Court has eventually exercised jurisdiction which is vested in it.

11. In the present case, as the Court has recorded satisfaction that the Applicant had violated condition of bail, that obviously could be a legitimate ground for cancelling the bail operating in favour of the Applicant which was granted by another Judge of the same Court. Mr.Jha

has not placed before me any direct decision on the point that even cancellation of bail application on the ground of violation of condition of bail, will have to be moved before the same Judge, which had granted bail in the earlier point of time.

12. Viewed in this perspective, the first contention pressed into service on behalf of the Applicant, does not commend to me.

13. Insofar as merits are concerned, I find substance in the argument of the learned A.P.P. that the Applicant has not produced the relevant material to justify the source of procurement of the goods which had been sold by him to third parties and which resemble the description of the stolen property which were removed from the factory premises from Khopoli to be delivered at Madras, whereas, were unloaded in the godown of Applicant at Chakan, Pune. The two bills on which strong reliance was placed on behalf of the Applicant to support the argument that the said goods were purchased from Sangam Enterprises clearly overlooks the fact that the said bills are dated 16th June

2004 and 17th June 2004 respectively, whereas, the goods were removed from the factory premises from Khopoli on or after 31st May 2004 and 1st June 2004 and thereafter, directly unloaded in the godown of the Applicant at Chakan, Pune. This fact is supported by the evidence collected by the investigating agency in the shape of statement of Shri Ramu Shrinivasrao Mandar, who is the owner of transport company.

14. Besides, the description of the goods in the bill of Sangam Enterprises dated 16th June 2004 is square bars of 130 mm, whereas, the goods in question are round steel bars of 40 mm, 10 mm and 50 mm respectively. The second bill of Sangam Enterprises, which is pressed into service, describe the goods purchased by the Applicant as M.S.Bright Bars. In other words, there is force in the argument canvassed on behalf of the prosecution that the Applicant was misleading the investigating agency by producing documents which are of no relevance.

15. Opportunity was granted to the Applicant

even during the pendency of present Application to produce all relevant documents by this Court by order dated 7th April 2005. The Applicant has, however, produced record, which does not indicate source of procurement of the goods which have been sold by him to the third parties named earlier. In other words, the source from where the goods which eventually were sold by the Applicant to third parties, is not disclosed to the investigating agency and as the said goods resemble the stolen goods removed from the factory premises, there is substance in the prosecution case that the Applicant is misleading the investigating agency. This, by itself, is a good ground for cancelling anticipatory bail granted in favour of the Applicant and therefore, no fault can be found with the order passed by the lower Court in that behalf.

16. The second ground which has weighed with the lower Court is that the Applicant is not co-operating with the investigating agency and in fact, has refused to accompany the Investigating Officer to Aurangabad for verification of certain information. The fact that the Applicant has

refused to travel along with the Investigating Officer to Aurangabad, is not disputed. However, explanation was offered before this Court that the Applicant was told to accompany the Investigating Officer on the same day, which he declined, on account of his health condition. This argument was not canvassed before the lower Court.

17. Be that as it may, the fact remains that the Applicant failed to attend Police Station on 31st January 2005 inspite of assurance given in that behalf by him in writing on 24th January 2005, on which day, he was expected to accompany the Investigating Officer to Aurangabad for verification of certain information.

18. Taking overall view of the matter, no fault can be found with the prosecuting agency moving the concerned Court for cancellation of anticipatory bail operating in favour of the Applicant, as the Applicant was not co-operating for the purpose of investigation.

19. As material to support the stand of the

Prosecution was established from the record, which found favour with the lower Court and was made the basis for cancelling bail granted to the Applicant, no fault can be found with the approach of the lower Court in this behalf.

20. The last submission that remains to be considered is, according to the Applicant due to his health condition, he was not in a position to travel and for which reason, he did not accompany the Investigating Officer to Aurangabad for further verification. As mentioned earlier, the Applicant had assured the Investigating Officer that he would attend Police Station on 31st January 2005, on which date, they were expected to travel to Aurangabad, but, however, the Applicant did not comply with that assurance and the requisition of the Investigating Officer. That is also a good ground for cancelling the bail. Moreover, the fact that the Applicant was unable to travel along with the Investigating Officer because of his health condition was not argued before the lower Court, as there is no indication in the order passed by the lower Court cancelling the bail, which is impugned

in the present Application. To get over this position, Mr.Jha relied on the pleadings filed before the lower Court to show that the Applicant did not comply with the requisition because of his health condition.

21. Be that as it may, the fact remains that the Applicant has not co-operated the investigating agency, taking advantage of the anticipatory bail granted in respect of such a serious offence and even though, there was material to indicate his complicity in the commission of the offence. In such a situation, no fault can be found with the lower Court in recalling the indulgence shown to the Applicant, which order, can be said to be passed in the interest of justice.

22. Hence, there is no substance in this Application, the same is dismissed.

23. The Investigating Officer is at liberty to proceed against the Applicant in accordance with law.

24. At this stage, Mr.Jha prays that two weeks time be granted to the Applicant to enable the Applicant to take the matter to the Apex Court. I see no propriety in acceding to this request, in the fact situation of the present case. The same is rejected.

25. Needless to observe that in the event, the Applicant makes application for regular bail, that will be considered on its own merits in accordance with law by the appropriate Court.

A.M.KHANWILKAR, J.